

ADMINISTRATIVE PANEL DECISION

Bayer AG v. blank blank
Case No. D2023-0520

1. The Parties

The Complainant is Bayer AG, Germany, represented by BPM Legal, Germany.

The Respondent is blank blank, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <bayers-pl.com> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 3, 2023. On February 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 6, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent (redacted for privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 9, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on February 13, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 3, 2023.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on April 12, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and

Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a German incorporated healthcare, nutrition, and plant protection company. The Complainant is represented by over 374 consolidated companies in 83 countries and is manufacturing and selling numerous products including human pharmaceutical and medical care products, diagnostic products, and agricultural chemicals.

The Complainant is the owner of numerous trademarks, in particular the following trademarks (the "BAYER Trademark"):

- the international trademark BAYER, No. 1462909, registered on November 28, 2018, in classes 01, 03, 05, 09, 10, 31, 35, 41, 42 and 44,
- the international trademark BAYER, No. 1476082, registered on December 10, 2018, in classes 07, 08, 11, 16, 20, 24, 25, 28, 30, 32, 37, 38, 39, 40, 43 and 45.

The Complainant and its subsidiaries also own several domain names containing the BAYER Trademarks, such as <bayer.com> and <bayer.com.pl>.

The Disputed Domain Name <bayers-pl.com> was registered on December 8, 2022, and is inactive.

5. Parties' Contentions

A. Complainant

First of all, the Complainant asserts that the Disputed Domain Name is confusingly similar to its BAYER Trademark, considering it incorporates such mark and that the specific generic-Top-Level domain ("gTLD") is generally not an element of distinctiveness, and that the BAYER Trademark remains recognizable. The Complainant adds that the letter "pl" for Poland, is merely generic and do not adequately delimit the Disputed Domain Name from the BAYER Trademark.

Secondly, the Complainant submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, since "bayer" is not a word any market participant or other domain registrant would legitimately choose unless seeking to create an impression of an association with the Complainant. The Complainant adds that it has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the BAYER Trademark. The Complainant also asserts that there is no evidence of the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy, since the Respondent is not actively using the Disputed Domain Name. There is also no evidence suggesting that the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name or is commonly known by the Disputed Domain Name or the name "bayers-pl".

Finally, the Complainant contends that the Respondent has registered and is using the Disputed Domain Name in bad faith since:

- "bayer" is obviously not a word a domain name registrant would legitimately choose unless seeking to create an impression of an association with the Complainant,

- The Respondent's registration of the Disputed Domain Name prevents the Complainant from reflecting its trademarks in a corresponding Disputed Domain Name and the fact that the Respondent is not actively using but merely passively holding the Disputed Domain Name does not obstruct a finding of bad faith use, since (i) the Complainant's BAYER Trademark is highly distinctive and well-known, (ii) the Respondent had provided no evidence whatsoever of any actual or contemplated good faith use, (iii) the Disputed Domain Name clearly targets the Complainant, (iv) there does not appear to be any possible or conceivable good faith use of the Disputed Domain Name that would not be illegitimate.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant shall prove the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has right;
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

According to the Policy, paragraph 4(a)(i), the Complainant shall prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First of all, the Panel finds that the Complainant has provided evidence that it has rights in the BAYER Trademark.

Then, the Panel wishes to remind that the first element of the UDRP serves essentially as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Disputed Domain Name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of the UDRP (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Regarding the Disputed Domain Name, the Panel finds that it is composed of:

- the BAYER Trademark;
- the letter "s";
- a hyphen followed by the letters "pl", it being specified that it corresponds to the Internet country code Top-Level domain ("ccTLD") for Poland; and
- the generic Top-Level Domain ("gTLD") ".com", it being specified that the gTLD in a domain name is viewed as a standard registration requirement and as such is usually disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

According to prior UDRP panel decisions, it is sufficient that the Disputed Domain Name incorporates the entirety of a trademark, in order to consider the domain name as confusingly similar to that mark for purposes of UDRP standing. The mere addition of a geographical term or acronym, or simply added letters,

to a mark does not prevent a finding of confusing similarity (see sections 1.8 and 1.9 of the [WIPO Overview 3.0](#)).

Regarding the Disputed Domain Name, the Panel finds that it incorporates the BAYER Trademark in its entirety and considers that the insertion of the letter “s”, a hyphen, and the letters “pl” after the BAYER Trademark does not prevent a finding of confusing similarity, especially since the BAYER Trademark remains recognizable.

Therefore, the Panel holds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and that the Complainant has established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant shall demonstrate that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Policy, paragraph 4(c), outlines circumstances that if found by the Panel to be proved shall demonstrate the Respondent’s rights or legitimate interests in the Disputed Domain Name.

These circumstances are:

- before any notice of the dispute to the Respondent, the Respondent’s use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or
- the Respondent (as an individual, business, or other organization) has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or
- the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

According to prior UDRP panel decisions, it is sufficient that a complainant shows *prima facie* that a respondent lacks rights or legitimate interests in a domain name in order to shift the burden of production to the respondent (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Indeed, while the overall burden of proof in a UDRP proceeding is on the complainant, previous UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out *prima facie* that a respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)).

According to the Panel, the Complainant has shown *prima facie* that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. Indeed, it appears that the Respondent has not received any authorization to use the BAYER Trademark in any manner, including in domain names.

Moreover the Respondent is not using or has not prepared to use the Disputed Domain Name with a *bona fide* offering of goods or services, nor is the Respondent making a legitimate noncommercial or fair use of the Disputed Domain Name without intent for commercial gain. There is also no evidence on record showing that the Respondent is commonly known by the Disputed Domain Name or the name “bayers-pl”.

Furthermore, given that the Disputed Domain Name is composed of the Complainant's BAYER trademark, along with the addition of the letters "pl" that can be reasonably interpreted to reference Poland, and considering the Complainant's operations in Poland and its use of the domain name <bayer.com.pl>, the composition of the Disputed Domain Name is such to carry a risk of implied affiliation to the Complainant, contrary to the fact, which cannot constitute fair use since it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Finally, the Respondent did not reply to the Complainant's contentions, and consequently, did not rebut the Complainant's *prima facie* case.

Therefore, according to the Policy, paragraphs 4(a)(ii) and 4(c), the Panel considers that the Complainant has established that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name.

C. Registered and Used in Bad Faith

According to the Policy, paragraph 4(a)(iii), the Complainant shall prove that the Disputed Domain Name has been registered and is being used in bad faith.

Thus, paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

- (i) circumstances indicating that the Respondent has registered or acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Disputed Domain Name; or
- (ii) the Respondent has registered the Disputed Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Disputed Domain Name, provided that the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

According to prior UDRP decisions, particular circumstances panels may take into account in assessing whether the respondent's registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant's mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant's area of activity or natural zone of expansion), [...], (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name (see section 3.2.1 of the [WIPO Overview 3.0](#)).

First of all, the Panel finds that it is established that the Complainant's trademarks were registered and used before the registration of the Disputed Domain Name and are considered well known. Therefore, there is a presumption of bad faith registration by the unaffiliated Respondent of the Disputed Domain Name given that it reproduces the Complainant's BAYER Trademark in its entirety.

Indeed, there is no doubt that the Respondent was aware of the Complainant and its BAYER Trademark and has precisely chosen and registered the Disputed Domain Name in bad faith.

Moreover, the Panel notices that the Disputed Domain Name does not reach to an active website. The consensus view amongst UDRP panels is that “the non-use of a domain name (including a blank or ‘coming soon’ page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put” (see section 3.3 of the [WIPO Overview 3.0](#)).

In this case, the Panel is convinced that the overall circumstances of this case suggest that the Respondent’s non-use of the Disputed Domain Name is in bad faith. Such circumstances include:

- the fact that the Complainant’s BAYER Trademark is distinctive and well-known worldwide, and has been recognized by many UDRP panels as such;
- the Respondent’s failure to provide any answer to the Complainant’s contentions;
- the Respondent appears to have used false contact information when registering the Disputed Domain Name because the Written Notice could not be delivered by the courier service;
- the Respondent appears to have engaged the use of a privacy service to mask its details on the publicly available-Whols, seeing as the previously named Respondent was “Privacy service provided by Withheld for Privacy ehf”, to which the Center’s written communication was also unable to be delivered – the courier reporting that the related contact details were a “bad address”; and,
- there appears to be no conceivable good faith use that could be made by the Respondent of the Disputed Domain Name.

Therefore, in view of all the circumstances of this case, the Panel holds that the Respondent registered and is using the Disputed Domain Name in bad faith according to the Policy, paragraph 4(a)(iii).

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name, <bayers-pl.com>, be transferred to the Complainant.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: April 26, 2023